

1 SENATE BILL 479

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO AGRICULTURE; AMENDING AND ENACTING SECTIONS OF THE
12 WATER QUALITY ACT AND CHAPTER 76 NMSA 1978 TO DESIGNATE THE NEW
13 MEXICO DEPARTMENT OF AGRICULTURE AS THE CONSTITUENT AGENCY FOR
14 WATER QUALITY AND REGULATION OF THE AGRICULTURAL INDUSTRY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967,
18 Chapter 190, Section 4, as amended) is amended to read:

19 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
20 commission:

21 A. may accept and supervise the administration of
22 loans and grants from the federal government and from other
23 sources, public or private, which loans and grants shall not be
24 expended for other than the purposes for which provided;

25 B. shall adopt a comprehensive water quality

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1 management program and develop a continuing planning process;

2 C. shall adopt water quality standards for surface
3 and ground waters of the state based on credible scientific
4 data and other evidence appropriate under the Water Quality
5 Act. The standards shall include narrative standards and as
6 appropriate, the designated uses of the waters and the water
7 quality criteria necessary to protect such uses. The standards
8 shall at a minimum protect the public health or welfare,
9 enhance the quality of water and serve the purposes of the
10 Water Quality Act. In making standards, the commission shall
11 give weight it deems appropriate to all facts and
12 circumstances, including the use and value of the water for
13 water supplies, propagation of fish and wildlife, recreational
14 purposes and agricultural, industrial and other purposes;

15 D. shall adopt, promulgate and publish regulations
16 to prevent or abate water pollution in the state or in any
17 specific geographic area, aquifer or watershed of the state or
18 in any part thereof, or for any class of waters, and to govern
19 the disposal of septage and sludge and the use of sludge for
20 various beneficial purposes. The regulations governing the
21 disposal of septage and sludge may include the use of tracking
22 and permitting systems or other reasonable means necessary to
23 assure that septage and sludge are designated for disposal in,
24 and arrive at, disposal facilities, other than facilities on
25 the premises where the septage and sludge is generated, for

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1 which a permit or other authorization has been issued pursuant
2 to the federal act or the Water Quality Act. Regulations shall
3 not specify the method to be used to prevent or abate water
4 pollution but may specify a standard of performance for new
5 sources that reflects the greatest reduction in the
6 concentration of water contaminants that the commission
7 determines to be achievable through application of the best
8 available demonstrated control technology, processes, operating
9 methods or other alternatives, including where practicable a
10 standard permitting no discharge of pollutants. In making
11 regulations, the commission shall give weight it deems
12 appropriate to all relevant facts and circumstances, including:

13 (1) character and degree of injury to or
14 interference with health, welfare, environment and property;

15 (2) the public interest, including the social
16 and economic value of the sources of water contaminants;

17 (3) technical practicability and economic
18 reasonableness of reducing or eliminating water contaminants
19 from the sources involved and previous experience with
20 equipment and methods available to control the water
21 contaminants involved;

22 (4) successive uses, including but not limited
23 to domestic, commercial, industrial, pastoral, agricultural,
24 wildlife and recreational uses;

25 (5) feasibility of a user or a subsequent user

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1 treating the water before a subsequent use;

2 (6) property rights and accustomed uses; and

3 (7) federal water quality requirements;

4 E. shall assign responsibility for administering
5 its regulations to constituent agencies so as to assure
6 adequate coverage and prevent duplication of effort. To this
7 end, the commission may make such classification of waters and
8 sources of water contaminants as will facilitate the assignment
9 of administrative responsibilities to constituent agencies.

10 The commission shall also hear and decide disputes between
11 constituent agencies as to jurisdiction concerning any matters
12 within the purpose of the Water Quality Act. In assigning
13 responsibilities to constituent agencies, the commission shall
14 give priority to the primary interests of the constituent
15 agencies. The department of environment [~~shall~~] may provide
16 technical services [~~including certification of permits pursuant~~
17 ~~to the federal act, and shall maintain a repository of the~~
18 ~~scientific data required by this act~~]. Constituent agencies
19 may certify permits issued pursuant to federal acts;

20 F. may enter into or authorize constituent agencies
21 to enter into agreements with the federal government or other
22 state governments for purposes consistent with the Water
23 Quality Act and receive and allocate to constituent agencies
24 funds made available to the commission;

25 G. may grant an individual variance from any

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1 regulation of the commission whenever it is found that
2 compliance with the regulation will impose an unreasonable
3 burden upon any lawful business, occupation or activity. The
4 commission may only grant a variance conditioned upon a person
5 effecting a particular abatement of water pollution within a
6 reasonable period of time. Any variance shall be granted for
7 the period of time specified by the commission. The commission
8 shall adopt regulations specifying the procedure under which
9 variances may be sought, which regulations shall provide for
10 the holding of a public hearing before any variance may be
11 granted;

12 H. may adopt regulations to require the filing with
13 it or a constituent agency of proposed plans and specifications
14 for the construction and operation of new sewer systems,
15 treatment works or sewerage systems or extensions,
16 modifications of or additions to new or existing sewer systems,
17 treatment works or sewerage systems. Filing with and approval
18 by the federal housing administration of plans for an extension
19 to an existing or construction of a new sewerage system
20 intended to serve a subdivision solely residential in nature
21 shall be deemed compliance with all provisions of this
22 subsection;

23 I. may adopt regulations requiring notice to it or
24 a constituent agency of intent to introduce or allow the
25 introduction of water contaminants into waters of the state;

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1 J. may adopt regulations establishing pretreatment
2 standards that prohibit or control the introduction into
3 publicly owned sewerage systems of water contaminants that are
4 not susceptible to treatment by the treatment works or that
5 would interfere with the operation of the treatment works;

6 K. shall not require a permit respecting the use of
7 water in irrigated agriculture, except in the case of the
8 employment of a specific practice in connection with such
9 irrigation that documentation or actual case history has shown
10 to be hazardous to public health or the environment;

11 L. shall not require a permit for applying less
12 than two hundred fifty gallons per day of private residential
13 gray water originating from a residence for the resident's
14 household gardening, composting or landscape irrigation if:

15 (1) a constructed gray water distribution
16 system provides for overflow into the sewer system or on-site
17 wastewater treatment and disposal system;

18 (2) a gray water storage tank is covered to
19 restrict access and to eliminate habitat for mosquitos or other
20 vectors;

21 (3) a gray water system is sited outside of a
22 floodway;

23 (4) gray water is vertically separated at
24 least five feet above the ground water table;

25 (5) gray water pressure piping is clearly

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1 identified as a nonpotable water conduit;

2 (6) gray water is used on the site where it is
3 generated and does not run off the property lines;

4 (7) gray water is applied in a manner that
5 minimizes the potential for contact with people or domestic
6 pets;

7 (8) ponding is prohibited, application of gray
8 water is managed to minimize standing water on the surface and
9 to ensure that the hydraulic capacity of the soil is not
10 exceeded;

11 (9) gray water is not sprayed;

12 (10) gray water is not discharged to a
13 watercourse; and

14 (11) gray water use within municipalities or
15 counties complies with all applicable municipal or county
16 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
17 and

18 M. shall coordinate application procedures and
19 funding cycles for loans and grants from the federal
20 government and from other sources, public or private, with
21 the local government division of the department of finance
22 and administration pursuant to the New Mexico Community
23 Assistance Act."

24 Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973,
25 Chapter 326, Section 4, as amended) is amended to read:

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1 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

2 A. By regulation, the commission may require
3 persons to obtain from a constituent agency designated by the
4 commission a permit for the discharge of any water contaminant
5 or for the disposal or reuse of septage or sludge.

6 B. The commission shall adopt regulations
7 establishing procedures for certifying federal water quality
8 permits.

9 C. Prior to the issuance of a permit, the
10 constituent agency may require the submission of plans,
11 specifications and other relevant information that it deems
12 necessary.

13 D. The commission shall by regulation set the dates
14 upon which applications for permits shall be filed and
15 designate the time periods within which the constituent agency
16 shall, after the filing of an administratively complete
17 application for a permit, either grant the permit, grant the
18 permit subject to conditions or deny the permit.

19 E. The constituent agency shall deny any
20 application for a permit or deny the certification of a federal
21 water quality permit if:

22 (1) the effluent would not meet applicable
23 state or federal effluent regulations, standards of performance
24 or limitations;

25 (2) any provision of the Water Quality Act

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1 would be violated;

2 (3) the discharge would cause or contribute to
3 water contaminant levels in excess of any state or federal
4 standard. Determination of the [~~discharges~~] discharge's
5 effect on ground water shall be measured at any place of
6 withdrawal of water for present or reasonably foreseeable
7 future use. Determination of the [~~discharges~~] discharge's
8 effect on surface waters shall be measured at the point of
9 discharge; or

10 (4) the applicant has, within the ten years
11 immediately preceding the date of submission of the permit
12 application:

13 (a) knowingly misrepresented a material
14 fact in an application for a permit;

15 (b) refused or failed to disclose any
16 information required under the Water Quality Act;

17 (c) been convicted of a felony or other
18 crime involving moral turpitude;

19 (d) been convicted of a felony in any
20 court for any crime defined by state or federal law as being a
21 restraint of trade, price-fixing, bribery or fraud;

22 (e) exhibited a history of willful
23 disregard for environmental laws of any state or the United
24 States; or

25 (f) had an environmental permit revoked

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1 or permanently suspended for cause under any environmental laws
2 of any state or the United States.

3 F. The commission shall by regulation develop
4 procedures that ensure that the public, affected governmental
5 agencies and any other state whose water may be affected shall
6 receive notice of each application for issuance, renewal or
7 modification of a permit. Public notice shall include:

8 (1) for issuance or modification of a permit:

9 (a) notice by mail to adjacent and
10 nearby landowners; local, state and federal governments; land
11 grant organizations; ditch associations; and Indian nations,
12 tribes or pueblos;

13 (b) posting at a place conspicuous to
14 the public and near the discharge or proposed discharge site;
15 and

16 (c) a display advertisement in English
17 and Spanish in a newspaper of general circulation in the
18 location of the discharge or proposed discharge; provided,
19 however, that the advertisement shall not be displayed in the
20 classified or legal advertisement sections; and

21 (2) for issuance of renewals of permits:

22 (a) notice by mail to the interested
23 public, municipalities, counties, land grant organizations,
24 ditch associations and Indian nations, tribes or pueblos; and

25 (b) a display advertisement in English

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1 and Spanish in a newspaper of general circulation in the
2 location of the discharge; provided, however, that the
3 advertisement shall not be displayed in the classified or legal
4 advertisement sections.

5 G. No ruling shall be made on any application for a
6 permit without opportunity for a public hearing at which all
7 interested persons shall be given a reasonable chance to submit
8 evidence, data, views or arguments orally or in writing and to
9 examine witnesses testifying at the hearing. The hearing shall
10 be recorded. Any person submitting evidence, data, views or
11 arguments shall be subject to examination at the hearing.

12 H. The commission may adopt regulations for the
13 operation and maintenance of the permitted facility, including
14 requirements, as may be necessary or desirable, that relate to
15 continuity of operation, personnel training and financial
16 responsibility, including financial responsibility for
17 corrective action.

18 I. Permits shall be issued for fixed terms not to
19 exceed five years, except that for new discharges, the term of
20 the permit shall commence on the date the discharge begins, but
21 in no event shall the term of the permit exceed seven years
22 from the date the permit was issued.

23 J. By regulation, the commission may impose
24 reasonable conditions upon permits requiring permittees to:

25 (1) install, use and maintain effluent

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1 monitoring devices;

2 (2) sample effluents and receiving waters for
3 any known or suspected water contaminants in accordance with
4 methods and at locations and intervals as may be prescribed by
5 the commission;

6 (3) establish and maintain records of the
7 nature and amounts of effluents and the performance of effluent
8 control devices;

9 (4) provide any other information relating to
10 the discharge or direct or indirect release of water
11 contaminants; and

12 (5) notify a constituent agency of the
13 introduction of new water contaminants from a new source and of
14 a substantial change in volume or character of water
15 contaminants being introduced from sources in existence at the
16 time of the issuance of the permit.

17 K. The commission shall provide by regulation a
18 schedule of fees for permits, not exceeding the estimated cost
19 of investigation and issuance, modification and renewal of
20 permits. Fees collected pursuant to this section shall be
21 deposited in the water quality management fund; provided,
22 however, that fees collected by the New Mexico department of
23 agriculture as the constituent agency for the agricultural
24 industry pursuant to Section 3 of this 2009 act shall be
25 remitted to the department.

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1 L. The issuance of a permit does not relieve any
2 person from the responsibility of complying with the provisions
3 of the Water Quality Act, any applicable regulations or water
4 quality standards of the commission or any applicable federal
5 laws, regulations or standards.

6 M. A permit may be terminated or modified by the
7 constituent agency that issued the permit prior to its date of
8 expiration for any of the following causes:

9 (1) violation of any condition of the permit;

10 (2) obtaining the permit by misrepresentation
11 or failure to disclose fully all relevant facts;

12 (3) violation of any provisions of the Water
13 Quality Act or any applicable regulations, standard of
14 performance or water quality standards;

15 (4) violation of any applicable state or
16 federal effluent regulations or limitations; or

17 (5) change in any condition that requires
18 either a temporary or permanent reduction or elimination of the
19 permitted discharge.

20 N. If the constituent agency denies, terminates or
21 modifies a permit or grants a permit subject to condition, the
22 constituent agency shall notify the applicant or permittee by
23 certified mail of the action taken and the reasons. Notice
24 shall also be given by mail to persons who participated in the
25 permitting action.

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1 O. A person who participated in a permitting action
2 before a constituent agency or a person affected by a
3 certification of a federal permit and who is adversely affected
4 by such permitting action or certification may file a petition
5 for review before the commission. Unless a timely petition for
6 review is made, the decision of the constituent agency shall be
7 final and not subject to judicial review. The petition shall:

8 (1) be made in writing to the commission
9 within thirty days from the date notice is given of the
10 constituent agency's action;

11 (2) include a statement of the issues to be
12 raised and the relief sought; and

13 (3) be provided to all other persons
14 submitting evidence, data, views or arguments in the proceeding
15 before the constituent agency.

16 P. If a timely petition for review is made, the
17 commission shall consider the petition within ninety days after
18 receipt of the petition. The commission shall notify the
19 petitioner and the applicant or permittee, if other than the
20 petitioner, by certified mail of the date, time and place of
21 the review. If the petitioner is not the applicant or
22 permittee, the applicant or permittee shall be a party to the
23 proceeding. The commission shall ensure that the public
24 receives notice of the date, time and place of the review.

25 Q. The commission shall review the record compiled

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1 before the constituent agency, including the transcript of any
2 public hearing held on the application or draft permit, and
3 shall allow any party to submit arguments. The commission may
4 designate a hearing officer to review the record and the
5 arguments of the parties and recommend a decision to the
6 commission. The commission shall consider and weigh only the
7 evidence contained in the record before the constituent agency
8 and the recommended decision of the hearing officer, if any,
9 and shall not be bound by the factual findings or legal
10 conclusions of the constituent agency. Based on the review of
11 the evidence, the arguments of the parties and recommendations
12 of the hearing officer, the commission shall sustain, modify or
13 reverse the action of the constituent agency. The commission
14 shall enter ultimate findings of fact and conclusions of law
15 and keep a record of the review.

16 R. Prior to the date set for review, if a party
17 shows to the satisfaction of the commission that there was no
18 reasonable opportunity to submit comment or evidence on an
19 issue being challenged, the commission shall order that
20 additional comment or evidence be taken by the constituent
21 agency. Based on the additional evidence, the constituent
22 agency may revise the decision and shall promptly file with the
23 commission the additional evidence received and action taken.
24 The commission shall consider the additional evidence within
25 ninety days after receipt of the additional evidence and shall

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1 notify the petitioner and the applicant or permittee, if other
2 than the petitioner, of the date, time and place of the review.

3 S. The commission shall notify the petitioner and
4 all other participants in the review proceeding of the action
5 taken by the commission and the reasons for that action."

6 Section 3. A new section of the Water Quality Act is
7 enacted to read:

8 "[NEW MATERIAL] AGRICULTURAL INDUSTRY--NEW MEXICO
9 DEPARTMENT OF AGRICULTURE--CONSTITUENT AGENCY.--The New Mexico
10 department of agriculture is the designated constituent agency
11 pursuant to Section 74-6-4 NMSA 1978 for the agricultural
12 industry. For purposes of this section, "agricultural
13 industry" includes dairy farmers, milk producers, other
14 livestock production and feeding facilities and farm crop
15 production facilities."

16 Section 4. A new section of Chapter 76, Article 1 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] NEW MEXICO DEPARTMENT OF AGRICULTURE--
19 ADDITIONAL DUTIES--CONSTITUENT AGENCY FOR WATER QUALITY OF
20 AGRICULTURAL INDUSTRY.--The New Mexico department of
21 agriculture is the constituent agency pursuant to Section
22 74-6-4 NMSA 1978 of the water quality control commission for
23 the agricultural industry. For purposes of this section,
24 "agricultural industry" includes dairy farmers, milk producers,
25 other livestock production and feeding facilities and farm crop

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1 production facilities."

2 Section 5. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2009.

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